

United States ⁸
Circuit Court of Appeals
For the Ninth Circuit.

EVA MAY GILL,

Appellant,

vs.

FILLMORE WHITE,

Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

FILED

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F. D. MUNCKTON,
CLERK

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Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

For Eva May Gill, a Creditor, Appellant:

ROBERT H. COUNTRYMAN, Esq., San Francisco, California.

For the Bankrupt and Appellee:

REUBEN G. HUNT, Esq., San Francisco, California.

In the District Court of the United States, Northern District of California, First Division.

No. 9737.—IN BANKRUPTCY.

In the Matter of FILLMORE WHITE,

Bankrupt.

Praecipe for Transcript on Appeal.

To the Clerk of the Above-named Court:

Please make up, print and issue in the above-entitled cause a certified transcript of the record upon appeal allowed in this cause to the Circuit Court of Appeals of the United States for the Ninth Circuit, sitting at San Francisco, California, the said transcript to include the following:

1. Petition of Fillmore White for a discharge;
2. Specification of grounds on opposition to bankrupt's discharge;
3. Report of referee on opposition to discharge;
4. Exceptions to report of referee in opposition to discharge;
5. Order of the above-entitled court overruling the exceptions to the report of the referee in opposition to discharge and confirming said report of said

referee and granting a discharge to said Fillmore White, bankrupt;

6. Petition for order allowing appeal and order allowing appeal;

7. Assignment of errors;

8. Bond on appeal;

9. Citation on appeal;

10. Praeclipe for transcript on appeal. [1*]

You will please transfer to the Circuit Court of Appeals with the record to be prepared as above the original Citation on appeal.

R. H. COUNTRYMAN,

Attorney for Appellant.

[Endorsed]: Filed Apr. 3, 1917, at 3 o'clock and 45 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [2]

In the District Court of the United States, Northern District of California, First Division.

No. 9737.—IN BANKRUPTCY.

In the Matter of FILLMORE WHITE,

A Bankrupt.

Affidavit of Service of Praeclipe for Transcript of Record.

United States of America,

State of California,

City and County of San Francisco,—ss.

On this 3d day of April, 1917, personally appeared before me, George H. Cavalier, the subscriber and

*Page-number appearing at foot of page of original certified Transcript of Record.

makes oath that he delivered a true copy of the Praecepse filed herein on the 3d day of April, 1917, to R. G. Hunt, by delivering to and leaving with his stenographer at the law office of said R. G. Hunt, Flatiron Building, San Francisco, said copy.

GEORGE H. CAVALIER.

Subscribed and sworn to before me this 3d day of April, 1917.

[Seal] HENRIETTA HARPER,
Notary Public in and for said City and County of
San Francisco.

[Endorsed]: Filed Apr. 10, 1917, at 3 o'clock and
— min. P. M. W. B. Maling, Clerk. By T. L.
Baldwin, Deputy Clerk. [3]

*In the District Court of the United States, Northern
District of California.*

No. 9737.—IN BANKRUPTCY.

In the Matter of FILLMORE WHITE,
Bankrupt.

(Petition for Discharge.)

To the Honorable M. T. DOOLING, Judge of the
District Court of the Northern District of California:

— of —, the City and County of San Francisco and State of California, in said District, respectively represents that on the 17th day of November A. D. 1915 last past, he was duly adjudged bankrupt under the Acts of Congress relating to bankruptcy; that he has duly surrendered all

his property and rights of property, and has fully complied with the requirements of said acts and of the orders of the Court touching his bankruptcy.

Wherefore he prays that he may be decreed by the Court to have a full discharge from all debts provable against his estate under said bankrupt acts, except such debts as are exempted by law from such discharge.

Dated this 11th day of February, A. D., 1916.

FILLMORE WHITE,

Bankrupt. [4]

State of California,

City and County of San Francisco.

Fillmore White, being sworn, says: That he has applied to the District Court for the Northern district of California for discharge from his debts under the provisions of the acts of Congress relating to bankruptcy; that he has not done, suffered, or been privy to any act, matter or thing specified in said acts as ground for withholding or refusing such discharge, and that he has not suffered or been privy to any act, matter or thing which it specified as an objection to his discharge would cause such discharge to be refused by said Court.

FILLMORE WHITE,

Bankrupt.

Subscribed and sworn to before me, this 11th day of February, A. D. 1916.

[Seal] JOHN E. MANDERS,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Feb. 14, 1916, at 11 o'clock and 30 min. A. M. A. B. Kreft, Referee in Bankruptcy.

Filed Mar. 10, 1916, at 9 o'clock and 30 min. A. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [5]

In the District Court of the United States, in and for the Northern District of California, First Division.

No. 9737.

In the Matter of **FILLMORE WHITE**,

Bankrupt.

Specification of Grounds of Opposition to Bankrupt's Discharge.

Eva May Gill, of Sparks, State of Nevada, a party interested in the estate of said Fillmore White, Bankrupt, does hereby oppose the granting to him of a discharge from his debts, and, particularly, the debt to her, and for the grounds of such opposition does file the following specifications, viz.:

That said Eva May Gill is informed and believes, and upon such information and belief alleges:

That said bankrupt, Fillmore White, with the intent to conceal his financial condition, has destroyed, concealed and failed to keep books of account from which his financial condition might be ascertained, knowingly and with fraudulent intent so as to prevent said creditors from inquiring into the financial condition of said bankrupt.

That said Eva May Gill is further informed and believes, and on such information and belief, alleges:

That within the period of four (4) months immediately preceding the filing of the petition in bankruptcy by said bankrupt, Fillmore White, said bankrupt transferred, removed, destroyed, concealed and permitted to be removed, destroyed and concealed, certain property belonging to said bankrupt [6] with the intent to hinder, delay and defraud his said creditors and particularly, said Eva May Gill.

That said creditor, Eva May Gill, further opposes the granting to said bankrupt a discharge from his debts on the following grounds, viz.:

That said bankrupt has been guilty of fraud upon said Eva May Gill, and has made false and fraudulent representations to said Eva May Gill, that is to say, as follows, to wit:

That on the 20th day of March, 1912, Charles S. Laumeister, Peter P. Flood and Marshall W. Giselman made, executed and delivered to the husband of said creditor, Eva May Gill, a promissory note for the sum of Twenty-five Hundred (\$2,500) Dollars, payable six (6) months after date. That said note was given by said makers as the purchase price of certain shares of stock in the Reno Ruhl Gold Mining Company, a Nevada corporation, which, prior to the 20th day of March, 1912, were owned and held by said W. J. Gill, the husband of said Eva May Gill. That on or about the 20th day of July, 1912, said bankrupt, Fillmore White, purchased from said Flood and Laumeister certain shares of stock owned and held by said Flood and Laumeister in the Reno Ruhl Gold Mining Company, and as a part consideration of said sale said bankrupt assumed

and agreed to pay the said note so executed to said W. J. Gill.

That on the 20th day of September, 1915, the day upon which the note executed by said Laumeister and Flood and Giselman fell due, said bankrupt induced said W. J. Gill to surrender up the said note of March 20th, 1912, to said [7] bankrupt, and in lieu thereof to accept a joint and several note made and executed by said bankrupt and said Marshall W. Giselman, and endorsed by said Flood and Laumeister, and payable six (6) months after date.

That on or about the 13th day of November, 1912, said W. J. Gill, in writing, endorsed and delivered said note of September 20th, 1912, to said Eva May Gill. That said W. J. Gill died on November 13th, 1912. That a short time before said note of September 20th, 1912, fell due said bankrupt persuaded said Eva May Gill, not to presently prosecute or take any proceedings towards the collection of said note and requested an extension of time for the payment thereof. That said Eva May Gill complied with the request of said bankrupt for an extension of the payment of said note of September 20th, 1912. That said Eva May Gill was ignorant of the law providing that an extension of time granted to the makers of said note of September 20th, 1912, would legally prevent her from obtaining payment from the endorsers thereof. That each of said endorsers was and is financially able to pay the sum of money evidenced to be paid by said note.

That the purpose and object of said bankrupt in

applying for said extension of time was for the fraudulent purpose and object of relieving said endorsers from any liability on said note, and exonerating them from the payment of the same, thereby cancelling the indebtedness of said bankrupt to said Laumeister and Flood and preventing said Eva May Gill from obtaining said money from said Laumeister and Flood.

That after said endorsers on said note of September 20th, 1912, were relieved from said obligation to said [8] Eva May Gill, said bankrupt failed, neglected and refused to pay said note of September 20th, 1912, or any part or portion thereof, claiming said *said* W. J. Gill, deceased, had made false and fraudulent representations to said bankrupt as to the value per ton of the ore that was taken from said mine and as to the paying character of said mine in general.

That said Eva May Gill was compelled to bring suit in the Superior Court of the State of California, in and for the City and County of San Francisco, No. 55,135 on the register of said Superior Court, against said bankrupt, Fillmore White, for the collection of said note.

That on the 23d day of December, 1914, said Superior Court, rendered judgment in favor of said Eva May Gill and against said bankrupt for the amount due on said promissory note of September 20th, 1912 with interest and costs of suit. That judgment thereon was entered on the 4th day of January, 1915. Said judgment is final and unsatisfied in whole or in part.

That said bankrupt by fraudulently procuring said

extension of time and thereby relieving the endorsers on said note of September 20th, 1912, prevented said Eva May Gill from legally proceeding against said endorsers who were, and now are, and each of them is, responsible and solvent, and were and are able to pay said note, and the whole amount of principal and interest thereof.

That on account of said fraud, and for the other reasons above set forth in this opposition to the discharge of said bankrupt, this creditor prays that said application for a discharge by said bankrupt be denied.

EVA MAY GILL,
Creditor.

By R. H. COUNTRYMAN,
Her Attorney. [9]

State of California,
City and County of San Francisco,—ss.

R. H. Countryman, being duly sworn, says: That he is the attorney for said Eva May Gill and represents said creditor in said bankruptcy proceedings; that he has read the above and foregoing opposition to discharge and well knows the contents thereof, that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

That this affidavit is made by this affiant because of the absence of said Eva May Gill from the State of California.

That this affiant resides in said City and County of San Francisco, and has his office therein.

R. H. COUNTRYMAN.

Subscribed and sworn to before me this 18th day of March, 1916.

[Seal] HENRIETTA HARPER,
Notary Public in and for said City and County of San Francisco.

[Endorsed]: Filed Mar. 18, 1916, at 10 o'clock and
— min. A. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy, Deputy Clerk. [10]

In the District Court of the United States, for the Southern Division of the Northern District of California, First Division.

No. 9737.—IN BANKRUPTCY.

In the Matter of FILLMORE WHITE,
Bankrupt.

Report of Referee on Opposition to Discharge.

To Hon. MAURICE T. DOOLING, Judge of the United States District Court, for the Southern Division of the Northern District of California, First Division:

The undersigned referee, to whom as Special Master was referred the opposition of Eva May Gill, a creditor, to the discharge of the above-named bankrupt to ascertain and report the facts and his conclusions thereon, respectfully certifies and reports:

That upon the hearing Robert H. Countryman, Esq., appeared as counsel for the said opposing credi-

tor, and Reuben G. Hunt, Esq., appeared as counsel for the bankrupt. The testimony on the hearing was not reported. There are three specifications set forth in the opposition to discharge.

The first specification is as follows:

“That said bankrupt, Fillmore White, with the intent to conceal his financial condition, has destroyed, concealed and failed to keep books of account from which his financial condition might be ascertained, knowingly and with fraudulent intent so as to prevent said creditors from inquiring into the financial condition of said bankrupt.”

The bankrupt is a dentist. At the time of the filing of the petition in bankruptcy, he was engaged in the practice of his profession in San Francisco, but had been conducting his office only a short time prior to the filing of such petition. During the time he was practicing his profession, he has kept a financial record of his business through a “card system.” Prior to [11] opening his dental office, the bankrupt had been for several years Secretary of the Robert White Company, a corporation, engaged in the administration of the assets of the estate of Robert White, deceased, the father of the bankrupt. The transactions of this company, and the transactions of the bankrupt with the company, appeared upon the books of the corporation. I find that this first specification has not been proven. The evidence fails to show that there was any intent, or attempt on the part of the bankrupt to conceal his financial condition.

The second specification is as follows:

“That within the period of four (4) months immediately preceding the filing of the Petition in Bankruptcy by said bankrupt, Fillmore White, said bankrupt transferred, removed, destroyed, concealed and permitted to be removed, destroyed and concealed, certain property belonging to said bankrupt with the intent to hinder, delay and defraud his said creditors and particularly, said Eva May Gill.”

This specification is defective, in that it does not set forth the facts concerning the alleged fraudulent transfer. The referee, however, took evidence concerning certain acts of the bankrupt which, it was claimed, supported this specification. The facts are briefly, as follows:

On November 20th, 1912, the bankrupt was the owner of 125 shares of the capital stock of the said Robert White Company, and on that day transferred these shares on the books of the corporation, to his wife, Helen B. White. On August 4th, 1914, the bankrupt and his said wife executed and delivered to his mother, Emilie White, their joint promissory note for \$10,136.15 to cover advances previously made by the mother to the son. On May 7th, 1915, the mother commenced against the bankrupt and his wife, an action in the Superior Court of the State of California, in and for the City and County of San Francisco, to recover the principal of said promissory note [12] and the interest thereon, and in said action attached the said shares of stock which stood on the books of the corporation in the name of the wife. Judgment

was obtained in the said action for a full amount, and on June 21st, 1915, it was agreed between the plaintiff and the defendants, that the wife would transfer the stock to the mother if the mother would satisfy the judgment and pay the wife \$1500, it being agreed that the fair market value of the stock was \$1500 plus the amount of the judgment. This transaction was completed on July 2d, 1915, when the wife received the \$1500 and the stock was transferred to the mother on the books of the corporation, and the judgment satisfied of record. The petition in bankruptcy was filed herein on the 17th day of November, 1915, more than four months after the consummation of the said transfer. The facts as to the transfer are not in dispute. It appearing, however, that the transfer of the bankrupt's interest in the Robert White Company was made more than four months prior to the filing of the petition in bankruptcy, even though such transfer was made with the intent alleged in the specification, said transfer does not constitute a ground of opposition to discharge (see section 14, subdivision 4, of the Bankruptcy Act).

The third specification is as follows:

“That said bankrupt has been guilty of fraud upon said Eva May Gill, and has made false and fraudulent representations to said Eva May Gill, that is to say, as follows, to wit:

“That on the 20th day of March, 1912, Charles S. Laumeister, Peter P. Flood and Marshall W. Giselman made, executed and delivered to the husband of said creditor, Eva May Gill, a promissory note for the sum of Twenty-five Hundred

(\$2,500) Dollars, payable six (6) months after date. That said note was given by said makers as the purchase price of certain shares of stock in the Reno Ruhl Gold Mining Company, a Nevada corporation, which, prior to the 20th day of March, 1912, was owned and held by said W. J. Gill, the husband of said Eva May Gill. That on or about the 20th day of July, 1912, said bankrupt, [13] Fillmore White, purchased from said Flood and Laumeister certain shares of stock owned and held by said Flood and Laumeister in the Reno Ruhl Gold Mining Company, and as a part consideration of said sale said bankrupt assumed and agreed to pay the said note so executed to said W. J. Gill.

“That on the 20th day of September, 1915, the day upon which the note executed by said Laumeister and Flood and Giselman fell due, said bankrupt induced said W. J. Gill to surrender up the said note of March 20th, 1912, to said bankrupt, and in lieu thereof to accept a joint and several note made and executed by said bankrupt and said Marshall W. Giselman, and endorsed by said Flood and Laumeister, and payable six (6) months after date.

“That on or about the 13th day of November, 1912, said W. J. Gill, in writing, endorsed and delivered said note of September 20th, 1912, to said Eva May Gill. That said W. J. Gill died on November 13th, 1912. That a short time before said note of September 20th, 1912, fell due said bankrupt persuaded said Eva May Gill, not

to presently prosecute or take any proceedings towards the collection of said note and requested an extension of time for the payment thereof. That said Eva May Gill complied with the request of said bankrupt for an extension of the payment of said note of September 20th, 1912. That said Eva May Gill was ignorant of the law providing that an extension of time granted to the makers of said note of September 20th, 1912, would legally prevent her from obtaining payment from the endorsers thereof. That each of said endorsers was and is financially able to pay the sum of money evidenced to be paid by said note.

“That the purpose and object of said bankrupt in applying for said extension of time was for the fraudulent purpose and object of relieving said endorsers from any liability on said note, and exonerating them from the payment of the same, thereby cancelling the indebtedness of said bankrupt to said Laumeister and Flood and preventing said Eva May Gill from obtaining said money from said Laumeister and Flood.

“That after said endorsers on said note of September 20th, 1912, were relieved from said obligation to said Eva May Gill, said bankrupt failed, neglected and refused to pay said note of September 20th, 1912, or any part or portion thereof, claiming that said W. J. Gill, deceased, had made false and fraudulent representations to said bankrupt as to the value per ton of the

ore that was taken from said mine and as to the paying character of said mine in general.

“That said Eva May Gill was compelled to bring suit in the Superior Court of the State of California, in and for the City and County of San Francisco, No. 55,135 on the register of said Superior Court, against said bankrupt, Fillmore White, for the collection of said note.

“That on the 23d day of December, 1914, said Superior Court, rendered judgment in favor of said [14] Eva May Gill and against said bankrupt for the amount due on said promissory note of September 20th, 1912, with interest and costs of suit. That judgment thereon was entered on the 4th day of January, 1915. Said judgment is final and unsatisfied in whole or in part.

“That said bankrupt by fraudulently procuring said extension of time and thereby relieving the endorsers on said note of September 20th, 1912, prevented said Eva May Gill from legally proceeding against said endorsers who were, and now are, and each of them is, responsible and solvent, and were and are able to pay said note, and the whole amount of principal and interest thereof.”

This specification amounts to the charge that the bankrupt has been guilty of fraud upon Eva May Gill, and has made false and fraudulent representations to said Eva May Gill. The referee held that the facts charged in this third specification, even though true, do not constitute a ground of opposition

to discharge (see Section 14 of the Bankruptcy Act). The facts alleged concern only the dischargability of the claim of Eva May Gill, and do not affect the bankrupt's right to a general discharge. Section 17, subdivision 4 of the Bankrupt Act, provides:

"A discharge in bankruptcy shall release a bankrupt from all his provable debts, except such as were created by his fraud. . . ."

One question of law arose during the hearing, which the referee was requested, by counsel for the opposing creditor, to state to the Court. The opposing creditor called the bankrupt's wife as a witness. The bankrupt, through his counsel, refused to consent to the examination of the wife against him, and counsel for the bankrupt cited in support of his objection, the following cases:

In re Kessler, 35 Am. B. R. 30;

In re Hoffman, 28 Am. B. R. 680; 199 Fed. 448;

In re Thompson, 28 Am. B. R. 794; 197 Fed. 681.

In the case of In re Kessler, the United States District Court, for the Eastern District of Pennsylvania, speaking through [15] Thompson, District Judge, held that section 21a of the Bankruptcy Act permitting the wife of the bankrupt to be examined was qualified by Section 858 of the Revised Statutes of the United States as amended by act of June 29th, 1906, so that the competency of a witness to testify in a bankruptcy proceeding is to be determined by the laws of the state or territory in which court is held. Section 1881 of the Code of Civil Procedure of California, subdivision 1, provides as follows:

“A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceedings for a crime committed by one against the other; or in an action brought by husband or wife against another person for the alienation of the affections of either husband or wife or in an action for damages against another person for adultery committed by either husband or wife.”

The referee sustained the objection, and the wife was not required to testify.

No one of the specifications of opposition to discharge having been proved, or established, I recommend that the bankrupt’s discharge be granted as prayed.

Counsel for the opposing creditor desired to submit a brief, and the matter was ordered submitted on briefs 10x10 and 5 on November 29th, 1916. Counsel for the bankrupt consented to a continuance for the filing of the opposing creditor’s brief until January 17th, 1917. No application has been made to me for an extension. Upon application by counsel for the bankrupt, the matter is now certified, no brief having been filed.

Dated January 20th, 1917.

Respectfully submitted,

ARMAND B. KREFT,

Special Master. [16]

There are no costs nor expenses upon the hearing.

The following papers are transmitted herewith:

Demurrer to specifications of grounds of opposition to bankrupt's discharge.

Citation of authorities upon examination of bankrupt's wife.

Memorandum as to the extent to which the wife of a bankrupt may be examined.

A. B. KREFT,

Special Master.

[Endorsed]: Filed Jan. 22, 1917, at 2 o'clock and 40 min. P. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [17]

In the District Court of the United States for the Southern Division of the Northern District of California, First Division.

No. 9737—IN BANKRUPTCY.

In the Matter of FILLMORE WHITE.

Bankrupt.

Exceptions to Report of Referee in Opposition to Discharge.

Now comes Eva May Gill of Sparks, Nevada, a party interested in the Matter of Fillmore White, bankrupt, as a creditor of said Fillmore White, bankrupt, and makes and files the following exceptions to the report of the referee in bankruptcy.

1. Said Eva May Gill excepts to the statement appearing on page 2, of said Report to the effect that said Eva May Gill has not proved the following specification:

“That said bankrupt, Fillmore White, with the intent to conceal his financial condition, has destroyed, concealed and failed to keep books of account from which his financial condition might be ascertained, knowingly and with fraudulent intent so as to prevent said creditors from inquiring into the financial condition of said bankrupt.”

for the reason that the evidence showed that said bankrupt is a graduate of the University of California and duly licensed to practice dentistry in the State of California; that said bankrupt from time to time practiced his profession, but abandoned the same in the year 1907; that some time prior to the filing of said bankruptcy petition said bankrupt resumed the practice of his said profession in the City and County of San Francisco, and in conducting said profession kept no books except a rough memoranda or card-index, unintelligible to any one except said bankrupt, and that said card-index did not give a true condition of the bankrupt’s business, said failure to keep books being [18] with the intent to conceal his financial condition and the status of his outstanding accounts. Said intent being shown by said failure to so keep said books.

2. That said Eva May Gill excepts to that part of the report of the referee in bankruptcy appearing on page 2 of said report to the effect that specification 2

appearing in said opposition to the discharge of said bankrupt is defective in this, that it does not set forth the facts concerning his fraudulent transfer of his property for the purpose of defrauding his creditors, and that said specification has not been proved. Said specification is as follows:

“That within the period of four (4) months immediately preceding the filing of the Petition in Bankruptcy by said bankrupt, Fillmore White, said bankrupt, transferred, removed, destroyed, concealed and permitted to be removed, destroyed and concealed, certain property belonging to said bankrupt with the intent to hinder, delay and defraud his said creditors and particularly said Eva May Gill.”

The testimony showed that said bankrupt, at the time of filing said Petition in Bankruptcy, was of approximately the age of thirty-eight years; that he graduated from the dental department of the University of California in the year 1898, and had been practicing his profession from time to time up to the year 1907, when he became secretary of the Robert White Company, a corporation, engaged in the administration of the assets of the Estate of Robert White, deceased, the father of said bankrupt, and earning a salary of \$200, a month, and held said position from 1907 to 1912.

That he had been a stockholder in said Robert White Company since the 8th day of July, 1914, at said time being the owner of 100 shares in said company, and from said time continued to be the owner of shares in said company. That on April 8th,

[19] 1908, Helen B. White, wife of said bankrupt, received 124 shares from said bankrupt which were later cancelled. That on the 20th day of November, 1912, said bankrupt again transferred to Helen B. White (his wife), 125 shares of the stock of said Robert White Company, being certificate No. 23, and representing his entire holdings in said company.

That on the 4th day of May, 1915, Emilie White, the mother of said bankrupt brought an action in the Superior Court in and for the City and County of San Francisco against said bankrupt and against said Helen B. White, his wife, and attached said stock; that said action was brought on a promissory note executed by said bankrupt and his said wife, the consideration for same being as testified to by said Emilie White, the mother of said bankrupt and plaintiff in said action, and by said bankrupt, as follows:

That the amount specified in said promissory note represented money advanced to said bankrupt while he was a student at the University of California in and prior to the year 1898. That said bankrupt at the time of his attendance at the University of California was living with his parents at said time, who were amply able to furnish said bankrupt with a college education; that said sums were advanced to him from time to time during his college course from the time of his entrance to his graduation; that said sums varied from small amounts from five to ten and up to one hundred dollars.

That said Emilie White kept no account or memoranda of the amounts advanced to said bankrupt

and was unable to state how the amount specified in said promissory note had been arrived at. That said bankrupt graduated from the University of California in the year 1898, and had made no efforts to repay said [20] money since said graduation and no demands had been made upon him for the repayment of the same by his mother or by any one in her behalf until the note above referred to was executed.

That in the latter part of the year 1914, and after said sums had been advanced to said bankrupt, by his said mother, as above stated, said bankrupt and his said wife executed a note for the sum of \$10,000, or thereabouts, said sum representing said alleged advance to said son while he was a student at the University of California.

That at the time of the execution of said note, on August 1st, 1914, to said Emilie White and for some time prior thereto, said bankrupt was indebted to said Eva May Gill.

That on the 5th day of March, 1914, said creditor, Eva May Gill, filed suit against said bankrupt in the Superior Court of the State of California, in and for the City and County of San Francisco, on a joint and several promissory note executed by said bankrupt and Marshall M. Giselman, for the sum of \$2,500, dated September 20th, 1912, and due six months after date, judgment being entered in favor of said Eva May Gill on January 4th, 1915. That at the time of said transfer of stock to said wife of said bankrupt, and at the time of the execution of the note of August 1st, 1914, by said bankrupt and his said wife, payable to the mother of said bankrupt was indebted to said

Eva May Gill in a sum exceeding \$3,000.

That the defendants in said action in which the mother of said bankrupt was plaintiff, defaulted and judgment was obtained on the 21st day of June, 1915, for the sum of \$10,136.15, and it was agreed between said Emilie White, the plaintiff therein, and the defendants (said bankrupt and his said [21] wife) that said wife of said bankrupt would transfer all the said stock to said Emilie White, the mother of said bankrupt, if the mother would satisfy the said judgment and that the said wife of said bankrupt be paid the sum of \$1,500. That said transfer was completed and on or about the 2d day of July, 1915, said proposition being made by the attorney for said defendants (said bankrupt and his wife).

That said Emilie White, the mother of said witness, testified that she did not keep any memoranda or books showing the advances made to said bankrupt; that she did not remember whether she had seen her said son and his wife sign the note, or whether she had ever seen said note at all; that she did not remember when she gave said note to her attorney to commence suit in said action; that she did not have any check-stubs showing alleged advances; that she did not remember seeing a certificate of stock issued to her for the stock supposed to be given in satisfaction of said judgment; that she stated that the reason said suit was instituted and said attachment levied was for the purpose of preventing said creditor Eva May Gill from obtaining the amount due her on a judgment entered by the Superior Court of the State of California in and for the City and

County of San Francisco, on about the 4th day of January, 1915, for a sum in excess of \$3,000.

That said bankrupt a short time prior to filing his petition in bankruptcy invested a sum in excess of \$3,000 in buying dental instruments, library and furnishing his office; that said money was so expended so that said bankrupt could claim said property as exempt.

That under said specification, and to prove the facts therein stated, said creditor Eva May Gill caused a subpoena to [22] be served upon said Helen B. White, the wife of said bankrupt; that in response thereto said Helen B. White appeared in court and was requested by said Eva May Gill to take the stand and be sworn in said proceedings, but upon advice of counsel said Helen B. White refused to be sworn in said action; that counsel for said wife and said bankrupt objected to said wife being sworn upon the ground that the wife could not testify for or against her said husband without his consent in said proceeding concerning transfer of property to the wife, for the reason that any testimony that might be developed would be a privileged communication and not permissible under the Federal Statutes or the laws of the State of California; that said creditor offered to prove, and intended to prove, that property of various kinds and character including said 125 shares of the stock in the Robert White Company had been transferred to said wife for the purpose of hindering, delaying and defrauding his said creditors and particularly said Eva May Gill. That said referee in bankruptcy sustained said ob-

jections and said Helen B. White was not required to testify in said proceeding.

That said referee should have required said Helen B. White to be sworn; that it could not be ascertained whether or not a question would require a privileged communication until questions were propounded to said witness.

That under the Federal Statutes and under the laws of the State of California, said Eva May Gill had the right to require and have the testimony of said Helen B. White.

That said Eva May Gill excepted and does here and now except to said ruling of said referee and to that part of said report of said referee.

3. That said Eva May Gill excepted and does here and [23] now except to the ruling and to the report of said referee in bankruptcy, appearing on page 5 of said report, to the effect that the third specification appearing in opposition to bankrupt's discharge do not constitute grounds of opposition to discharge. That said specification is as follows:

“That said bankrupt has been guilty of fraud upon said Eva May Gill, and has made false and fraudulent representations to said Eva Mil Gill, that is to say, as follows, to wit:

“That on the 20th day of March, 1912, Charles S. Laumeister, Peter P. Flood and Marshall W. Giselman made, executed and delivered to the husband of said creditor, Eva May Gill, a promissory note for the sum of Twenty-five hundred (\$2500) dollars, payable six (6) months after date. That said note was given by said makers

as the purchase price of certain shares of stock in the Reno Ruhl Gold Mining Company, a Nevada corporation, which, prior to the 20th day of March, 1912, was owned and held by said W. J. Gill, the husband of said Eva May Gill. That on or about the 20th day of July, 1912, said bankrupt Fillmore White, purchased from said Flood and Laumeister certain shares of stock owned and held by said Flood and Laumeister in the Reno Ruhl Gold Mining Company, and as a part consideration of said sale said bankrupt assumed and agreed to pay the said note so executed to said W. J. Gill.

“That on the 20th day of September, 1915, the day upon which the note executed by said Laumeister and Flood and Giselman fell due, said bankrupt induced said W. J. Gill to surrender up the said note of March 20th, 1912, to said bankrupt, and in lieu thereof to accept a joint and several note made and executed by said bankrupt and said Marshall W. Giselman, and endorsed by said Flood and Laumeister, and payable six (6) months after date.

“That on or about the 13th day of November, 1912, said W. J. Gill, in writing, endorsed and delivered said note of September 20th, 1912, to said Eva May Gill. That said W. J. Gill died on November 13th, 1912. That a short time before said note of September 20th, 1912, fell due said bankrupt persuaded said Eva May Gill, not to presently prosecute or take any proceedings towards the collection of said note and requested

an extension of time for the payment thereof. That said Eva May Gill complied with the request of said bankrupt for an extension of the payment of said note of September 20th, 1912. That said Eva May Gill was ignorant of the law providing that an extension of time granted to the makers of said note of September 20th, 1912, would legally prevent her from obtaining payment from the endorsers thereof. That each of said endorsers was and is financially able to pay the sum of money evidenced to be paid by said note.

“That the purpose and object of said bankrupt in applying for said extension of time was for the fraudulent purpose and object of relieving said endorsers from any liability on said note, and exonerating them from the payment [24] of the same, thereby cancelling the indebtedness of said bankrupt to said Laumeister and Flood and preventing said Eva May Gill from obtaining said money from said Laumeister and Flood.

“That after said endorsers on said note of September 20th, 1912, were relieved from said obligation to said Eva May Gill, said bankrupt failed, neglected and refused to pay said note of September 20th, 1912, or any part or portion thereof, claiming that said W. J. Gill, deceased, had made false and fraudulent representation to said bankrupt as to the value per ton of the ore that was taken from said mine and as to the paying character of said mine in general.

“That said Eva May Gill was compelled to bring suit in the Superior Court of the State of California, in and for the City and County of San Francisco, No. 55,135 on the register of said Superior Court, against said bankrupt, Fillmore White, for the collection of said note.

“That on the 23d day of December, 1914, said Superior Court, rendered judgment in favor of said Eva May Gill and against said bankrupt for the amount due on said promissory note of September 20th, 1912, with interest and costs of suit. That judgment thereon was entered on the 4th day of January, 1915. Said judgment is final and unsatisfied in whole or in part.

“That said bankrupt by fraudulently procuring said extension of time and thereby relieving the endorsers on said note of September 20th, 1912, prevented said Eva May Gill from legally proceeding against said endorsers who were, and now are, and each of them is, responsible and solvent, and were and are able to pay said note, and the whole amount of principal and interest thereof.”

That the only creditors of said bankrupt were members of his family, there being but a few claims against said bankrupt aggregating less than \$100.

That the purpose of the bankruptcy law is to aid and assist honest debtors who are being pressed by their creditors, and not to relieve a dishonest debtor from his obligations.

That said Eva May Gill offered to prove the above and foregoing specifications, but upon objection of

counsel said referee refused to allow said creditor to introduce testimony under said specifications, upon the grounds appearing in said report.

Dated February 5th, 1917.

Respectfully submitted,

R. H. COUNTRYMAN,
Attorney for said Creditor, Eva May Gill.

[Endorsed]: Filed Feb. 5, 1917, at 4 o'clock and
— Min. P. M. W. B. Maling, Clerk. By C. W.
Calbreath, Deputy Clerk. [25]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 9737.

In the Matter of FILLMORE WHITE,

Bankrupt.

(Opinion and Order Confirming Report of Referee on
Opposition to Discharge, Order Granting Dis-
charge, and Order Overruling Exceptions to Said
Report of Referee).

R. G. HUNT, Esq., Attorney for Bankrupt.

R. H. COUNTRYMAN, Attorney for Creditor, Eva
May Gill.

The report of the referee herein on opposition to
discharge is confirmed, and the discharge will be
granted.

The question of law presented as to whether the
wife of the bankrupt was a competent witness who
could be compelled to testify at the instance of the

creditor opposing bankrupt's discharge upon the hearing of such opposition before the referee need not be decided. It is only when the transfer of property with intent to defraud his creditors has been made by the bankrupt within four months immediately preceding the filing of his petition that such transfer is made a ground of opposition to his discharge. All the testimony shows, the referee finds, and counsel admitted at the argument of his exceptions before this Court, that the transfers to the wife of which he complains were made long before the beginning of the four months period. In such case the wife's testimony even if competent could not affect the result.

The exceptions to the referee's report will therefore be overruled, and the bankrupt's discharge granted.

March 22d, 1917.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Mar. 22, 1917, at 3 o'clock and
— min. P. M. W. B. Maling, Clerk. By Lyle S.
Morris, Deputy Clerk. [26]

UNITED STATES OF AMERICA.

*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 9737.

In the Matter of FILLMORE WHITE,

In Bankruptcy.

(Order of Discharge.)

WHEREAS, Fillmore White of the City and County of San Francisco in said District, has been duly adjudged a bankrupt under the acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf:

It is therefore ORDERED BY THIS COURT, that said Fillmore White be DISCHARGED, from all debts and claims which are made provable by said acts against his estate, and which existed on the 17th day of November, A. D. 1915, on which day the petition for adjudication was filed by him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

WITNESS, the Honorable M. T. DOOLING, Judge of said District Court, and the seal thereof, this 22d day of March, A. D. 1917.

[Seal]

W. B. MALING,
Clerk.

By T. L. Baldwin,
Deputy Clerk.

[Endorsed]: Filed Mar. 22, 1917, at 4 o'clock and 30 min. P. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [27]

In the District Court of the United States, Northern District of California, First Division.

No. 9737—IN BANKRUPTCY.

In the Matter of FILLMORE WHITE,
Bankrupt.

(Petition for Appeal and Order Allowing Appeal.)

Eva May Gill, creditor of said bankrupt, considering herself aggrieved by the order made herein, on the 22d day of March, 1917, wherein and whereby an order of discharge of said bankrupt was made and the objections made by her to said discharge were overruled and denied, for the reasons and upon the grounds specified in her assignments of error herewith, does hereby appeal from said order to the United States Circuit Court of Appeal, for the Ninth Judicial Circuit, and prays that this appeal may be allowed and that a transcript of the record, proceedings and files upon which said order was made and entered as aforesaid, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and said appellant further prays that an order be made fixing the amount of security which the said appellant shall give and furnish upon said appeal.

And your petitioner will ever pray, etc.

Dated, San Francisco, Cal., Monday, April 2d, 1917.

R. H. COUNTRYMAN,
Attorney for said Creditor, Eva May Gill.

The foregoing Petition for Appeal is granted and the claim of appeal is allowed, petitioner filing bond in the sum of \$300, to be conditioned as required by law, for the payment of costs.

Dated April 2d, 1917.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed Apr. 2, 1917, at 4 o'clock and
— min. P. M. W. B. Maling, Clerk. By Lyle S.
Morris, Deputy Clerk. [28]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 9737—IN BANKRUPTCY.

In the Matter of FILLMORE WHITE,

Bankrupt.

Assignment of Errors on Appeal.

Eva May Gill, creditor of said bankrupt, and appellant herein does hereby file the following Assignments of Errors upon which she will rely upon her appeal from the order entered herein on the 22d day of March, 1917, discharging the said bankrupt:

1. That the District Court of the United States in and for the Northern District of California erred in entering said order of discharge.
2. That the said Court erred in overruling and denying the objections of this appellant to any discharge of said bankrupt.
3. That said Court erred in overruling the exceptions and each of them of appellant to the report of the referee on the opposition to discharge.
4. That the Court erred in holding that the testimony of Helen B. White, wife of said bankrupt, should not be taken and that said Helen B. White could not even be sworn as a witness.
5. Said Court erred in assuming that all or any of the transfers objected to by appellant were made

more than four (4) months prior to the adjudication in bankruptcy.

6. Said Court erred in holding that it is only when the transfer of property with intent to defraud his creditors has been made by the bankrupt within four (4) months immediately preceding the filing of his petition that such transfer is made a ground of opposition to his discharge. [29]

7. The Court erred in holding that the bankrupt did keep proper books of account.

8. The Court erred in holding that the transfer of the stock of the Robert White Company to the mother of the bankrupt was a legitimate transfer.

9. The Court erred in approving the report of the referee in excluding evidence as to the third specification of the proposition of the discharge showing the method and action of the bankrupt in connection with said creditor concerning the original obligation from said bankrupt to said creditor.

Wherefore, said creditor prays that said order be reversed, and said district court be directed to enter an order refusing to discharge said bankrupt, and that such other relief may be awarded as the facts and the law demand and justify.

R. H. COUNTRYMAN,
Attorney for said Creditor, Eva May Gill.

[Endorsed]: Filed Apr. 2, 1917, at 4 o'clock and
— min. P. M. W. B. Maling, Clerk. By Lyle S.
Morris, Deputy Clerk. [30]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 9737—IN BANKRUPTCY.

In the Matter of FILLMORE WHITE,
Bankrupt.**Citation on Appeal—Copy.**

United States of America,—ss.

The President of the United States to Fillmore
White, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office in the United States District Court for the Northern District of California, First Division, wherein Eva May Gill is the appellant and you are the appellee, to show cause, if any there be, why the order discharging you as a bankrupt rendered against the said appellant as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 2d day of April, A. D. 1917.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed Apr. 2, 1917, at 4 o'clock and
— min. P. M. W. B. Maling, Clerk. By Lyle S.
Morris, Deputy Clerk. [31]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 9737—IN BANKRUPTCY.

In the Matter of FILLMORE WHITE,

Bankrupt.

(**Affidavit of Service of Citation on Appeal.**)

United States of America,

State of California,

City and County of San Francisco,—ss.

On this 3d day of April, 1917, personally appeared before me, George H. Cavalier, the subscriber, and makes oath that he delivered a true copy of the Citation filed herein on April 2d, 1917, to R. G. Hunt, by delivering to and leaving said copy with his stenographer at the law office of said R. G. Hunt, Flatiron Building, San Francisco.

GEORGE H. CAVALIER.

Subscribed and sworn to before me this 3d day of April, 1917.

[Seal] HENRIETTA HARPER,
Notary Public in and for said City and County of San Francisco.

[Endorsed]: Filed Apr. 3, 1917, at 3 o'clock and 45 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [32]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 9737—IN BANKRUPTCY.

In the Matter of FILLMORE WHITE,
Bankrupt.**Bond on Appeal.**

Know All Men by These Presents: That we, Eva May Gill, as principal, and the United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto Fillmore White, the bankrupt in the above-entitled matter, in the sum of Three Hundred (\$300) Dollars, lawful money of the United States, to be paid to him or his executors, administrators, successors and assigns, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally and each of our heirs, executors, administrators, successors and assigns by these presents.

Sealed with our seals, and dated this 2d day of April, A. D. 1917.

WHEREAS, the above-named Eva May Gill has obtained an appeal to the Circuit Court of Appeals of the United States to correct and reverse the order of the U. S. District Court for the Ninth District of California in the above-entitled matter, overruling the exceptions to the report of the referee on opposition to discharge and confirming said report of said Referee and granting a discharge to said Fillmore White, bankrupt.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Eva May Gill shall prosecute her said appeal to effect and answer all costs if it fails to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

EVA MAY GILL.

By R. H. COUNTRYMAN,

Her Attorney.

[Seal] UNITED STATES FIDELITY & GUARANTY COMPANY,

By WILL LOVE,

Its Attorney in Fact.

By H. V. D. JOHNS,

Its Attorney in Fact. [33]

State of California,

City and County of San Francisco,—ss.

On this 2d day of April, in the year 1917, before me, M. J. Cleveland, a notary public, in and for the City and County of San Francisco, personally appeared H. V. D. Johns and Will Love known to me to be the persons whose names are subscribed to the within and foregoing instrument as the attorneys in fact of the United States Fidelity & Guaranty Company, and acknowledged to me that they subscribed the name of the United States Fidelity and Guaranty Company thereto, as principal, and their own names as its attorneys in fact.

Notary Public in and for said City and County of San Francisco.

[Seal]

M. J. CLEVELAND,

Notary Public in and for Said City and County of San Francisco.

Approved this 2d day of April, 1917.

M. T. DOOLING,

Judge of the United States District Court.

[Endorsed]: Filed Apr. 2, 1917, at 4 o'clock and
— Min. P. M. W. B. Maling, Clerk. By Lyle S.
Morris, Deputy Clerk. [34]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 9737—IN BANKRUPTCY.

In the Matter of FILLMORE WHITE,

Bankrupt.

**Order Extending Time Until May 15, 1917, to File
Record in Appellate Court.**

For satisfactory reasons appearing to the Court,
the time for the filing of the record in the cause in
the Circuit Court of Appeals, Ninth Judicial Circuit,
pursuant to the appeal sued out and allowed in the
above-entitled matter is hereby granted until the
15th day of May, 1917.

No time heretofore granted by order of Court.

No time *heretofore by* stipulation of counsel.

Dated May 1st, 1917.

WM. W. MORROW,

Judge of the United States Circuit Court of Appeals.

[Endorsed]: Filed May 2, 1917, at 11 o'clock and
— min. A. M. W. B. Maling, Clerk. By Lyle S.
Morris Deputy Clerk. [35]

**Certificate of Clerk U. S. District Court to Transcript
on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California do hereby certify that the foregoing 35 pages, numbered from 1 to 35, inclusive, contain a full, true, and correct transcript of certain records and proceedings, in the matter of Fillmore White, in Bankruptcy, No. 9737, as the same now remain on file and of record in the office of the clerk of said court; said transcript having been prepared pursuant to and in accordance with the "Praeclipe for Transcript on Appeal" (copy of which is embodied in this transcript), and the instructions of the attorney for appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal, is the sum of Eighteen Dollars and Sixty Cents (\$18.60), and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the original citation on appeal, issued herein, page 37.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 15th day of May, A. D. 1917.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,
Deputy Clerk.

CMT.

[36]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 9737—IN BANKRUPTCY.

In the Matter of FILLMORE WHITE,
Bankrupt.**Citation on Appeal—Original.**

United States of America,—ss.

The President of the United States to Fillmore
White, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office in the United States District Court for the Northern District of California, First Division, wherein Eva May Gill is the appellant and you are the appellee, to show cause, if any there be, why the order discharging you as a bankrupt rendered against the said appellant as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 2d day of April, A. D. 1917.

M. T. DOOLING,
United States District Judge. [37]

[Endorsed]: No. 9737. (Bankruptcy.) In the District Court of the United States, Northern District of California, First Division. In the Matter of Fillmore White, Bankrupt. Citation on Appeal—Original. Filed at 4 o'clock and — Min. P. M. Apr. 2, 1917. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [38]

[Endorsed]: No. 2999. United States Circuit Court of Appeals for the Ninth Circuit. Eva May Gill, Appellant, vs. Fillmore White, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed May 15, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

